IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4822 of 1997
with
CIVIL APPLICATION No 11275 of 2001
&
CIVIL APPLICATION No 6049 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NF SOLANKI

Versus

SUPERINTENDENT

Appearance:

1. Special Civil Application No. 4822 of 1997 with
CIVIL APPLICATION No 6049 of 2002 &
CIVIL APPLICATION No 11275 of 2001
MR PC MASTER for Petitioner No. 1
MR SP HASURKAR, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 21/04/2005

ORAL JUDGEMENT

In the present petition, the petitioner has challenged his transfer order by which he was sought to be transferred from Surat to Vapi. The petitioner is engaged in the Class-IV post and he had opposed his transfer order on number of grounds including personal hardship and the Government policy not to transfer lowly paid staff members to distant places. It is also urged that the petitioner is suffering from kidney problem and it would, therefore, be difficult for him to discharge his duties at a place far away from his family establishment. By an order dated 30th July, 1997, this Court had while admitting the petition granted stay against the transfer order in terms of paragraph 13 (A) of the petition on the condition that the petitioner gives an undertaking to the Court within ten days from the date of the order to the effect that the petitioner shall continue to serve as "Sweeper" under the respondents regularly and diligently. The petitioner had accordingly also given an undertaking dated 30th July, 1997. Thus, during the pendency of the petition, the petitioner was protected by the interim order. Learned counsel for the petitioner submits that even today the petitioner is discharging his duties at Surat. He also points out that during the pendency of the petition though there was an attempt made to transfer the petitioner once again, this Court again protected him from such transfer.

When the petitioner has been retained at Surat, though under the protection of this Court since 1997, it would not be appropriate at this stage to permit the respondents to implement the transfer order at such a distant point of time. Many developments must have taken place in the interregnum and administrative requirements also would be different now. In that view of the matter, it would not appropriate to revive the situation obtained in the year 1997 at this distant point of time and permit the respondents mechanically to implement the transfer order. Thus, without expressing any opinion on the legality or otherwise of the transfer order, it is held that the respondents shall not transfer the petitioner by virtue of the said order passed in the year 1997. If situation so demands now, it will be open for the respondents to take suitable action as per administrative exigencies. I am sure administration will bear in mind the Government policy at the time of taking any such decision.

With these observations and directions, the petition is disposed of. Rule is made absolute to the

above extent. No order as to costs.

In view of the order in the main matter, Civil Applications do not survive and the same are disposed of accordingly.

(AKIL KURESHI, J.)
/malek